

### **REMARKS / ARGUMENTS**

The present application includes pending claims 1-29, all of which have been rejected. The Applicant respectfully submits that the claims define patentable subject matter.

Claims 1-29 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2002/0104099 ("Novak"). The Applicant respectfully traverses these rejections at least based on the following remarks.

#### **I. Examiner's Response to Arguments**

The Examiner states the following in the Final Office Action:

In response to applicant's argument (Remarks pg. 18 para. 2) that Novak does not disclose "wherein the selection from the media content is defined by the user", the examiner respectfully disagrees. Novak clearly teaches the media is transmitted in response to an end user request, [0085].

In response to applicant's argument (Remarks pg. 19 para. 1) that Novak does not disclose "the software platform is operable to communicate the media content to the communication network", the examiner respectfully disagrees. Novak teaches the source 122 uploads media content to the network, [0078], and the media source 122 is a STB, [0039].

See the Final Office Action at page 2. Initially, the Applicant points out that claims 1-29 have been rejected under the same rationale and the same grounds (anticipated by Novak under 35 U.S.C. § 102(e)), even though the Examiner states in page 2 of the Final Office Action that new grounds of rejection are being used in the Final Office Action.

In reference to Applicant's limitation of "wherein the selection from the media content is defined by the user", the Examiner continues to rely on Novak's ¶0085. As explained in the June 18, 2008 amendment, Novak discloses two distinct "users" with specific media rights. The first type of user is the "uploader" (or the upload source), which organizes and schedules the synthetic channel. The second type of user is the "end user" (e.g., the end user of STB 152 or 308). The Examiner has already equated Applicant's "communication device" to the STB 308 (which is the same as STB 152). Furthermore, the Examiner has equated Applicant's "software platform" to the platform described in ¶ 0077-0078 in reference to Novak's FIG. 11. However, as already explained in the June 18, 2008 amendment, **steps 1104-1106 of FIG. 11 and the corresponding description in ¶ 0078 relate to the upload source 122, and not to the end-users (the Applicant notes the specific reference that uploaded media is broadcasted to the end users; See lines 10-11 of ¶ 0078).** In this regard, the platform used by the upload source 122 in steps 1104-1106 is not used by the end user STB 308.

In reference to Applicant's limitation of "the software platform is operable to communicate the media content to the communication network", the Examiner continues to rely on Novak's ¶0078. As explained above, Novak's ¶0077-0078 relate to steps 1104-1106 of FIG. 11, which are performed by the upload source 122 and not by the STB 308 or 152. The fact that the upload source 122 may also utilize a STB for uploading is irrelevant since the Examiner has equated Applicant's "communication

device" to the STB 308. Novak uses the upload source 122 exclusively for uploading content, and the STB 308 (or STB 152) exclusively for receiving content.

Therefore, the Applicant maintains that Novak does not disclose or suggest at least the limitation of "the software platform receiving authentication information associated with a user of the communication device, and facilitating a display of a user-defined selection from the media content by the communication device in a user-defined layout, wherein the software platform is operable to communicate the media content to the communication network, and wherein the selection from the media content is defined by the user and corresponds to the received authentication information," as recited by the Applicant in independent claim 1.

The Applicant maintains all arguments stated in the June 18, 2008 amendment.

## **REJECTION UNDER 35 U.S.C. § 102**

### **II. Novak Does Not Anticipate Claims 1-29**

The Applicant first turns to the rejection of claims 1-29 under 35 U.S.C. 102(e) as being anticipated by Novak. With regard to the anticipation rejections under 102, MPEP 2131 states that "[a] claim is anticipated only if **each and every element** as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." See Manual of Patent Examining Procedure (MPEP) at 2131 (internal

citation omitted). Furthermore, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." See *id.* (internal citation omitted).

Without conceding that Novak qualifies as prior art under 35 U.S.C. § 102(e), the Applicant traverses the rejection as follows.

**A. Rejection of Independent Claim 1, 12, 16, and 27**

With regard to the rejection of independent claim 1 under 102(e), the Applicant submits that Novak does not disclose or suggest at least the limitation of "the software platform receiving authentication information associated with a user of the communication device, and facilitating a display of a user-defined selection from the media content by the communication device in a user-defined layout, wherein the software platform is operable to communicate the media content to the communication network, and wherein the selection from the media content is defined by the user and corresponds to the received authentication information," as recited by the Applicant in independent claim 1. The Final Office Action states the following:

Consider claim 1, Novak clearly teaches a system for supporting multiple users of a communication device (Fig. 1), comprising:

a communication device communicatively coupled to a communication network; (Fig. 3: STB 308 is coupled to the Internet 302, [0045].)

media content disposed in the communication network or the communication device (Media content can be stored in the STB, Fig. 1 [0032], or on the network, Fig. 3 [0047].), the media content comprising broadcast media and personal media; (The content maybe broadcast, [0027, or user created, [0062].)

a software platform residing on the communication device ([0077]), the software platform receiving authentication information associated with a user of the communication device, (Fig. 11: Access to the synthetic channel can be password protected, [0084].) and facilitating a display of user-defined selection from the media content by the communication device (Fig. 11: Block 114, [0085]) in a user-defined layout (Fig. 7: The user defines the layout of the display, [0063].), wherein the software platform is operable to communicate the media content to the communication network, (Fig. 11: Media objects are uploaded to a server, [0078], the media source 122 is a STB, [0039].) and wherein the selection from the media content is defined by the user (The end user requests the media content, [0085].) and corresponds to the received authentication information. (Only authorized users can view the content, [0084])

See the Final Office Action at page 3. With regard to the software platform functionalities, the Final Office Action relies for support on FIGS. 7 and 11 of Novak. Initially, the Applicant points out that Novak discloses two distinct roles for users within the media system of FIG. 1 – individuals who upload media and end users (e.g., users of STB 308 or 152). For example, certain individuals (e.g., upload source 122) can upload media objects to a server and specify a manner in which the media objects are to be played as a media program to an end user. The media program can be provided to an end user via a synthetic channel, which can be tuned to or selected by the end user as if tuning to a conventional television broadcast channel. See Novak at Abstract and ¶ 0010. Novak, at FIGS. 5-7, discloses how **an upload source can organize/schedule the synthetic channel**. Novak, at FIG. 11, discloses how **an end user receives/views the synthetic channel**. In other words, **the synthetic channel is set up by the uploader, or the upload source, and it is only viewed by the end user, where the upload source 122 is different from the viewer (end user) of the**

**EPG 153. Steps 1104-1106 of FIG. 11 and the corresponding description in ¶ 0078 relate to the upload source 122, and not to the end-users (the Applicant notes the specific reference that uploaded media is broadcasted to the end users; See lines 10-11 of ¶ 0078). In this regard, the platform used by the upload source 122 in steps 1104-1106 is not used by the end user STB 308.**

The Final Office Action is equating the password entered by the end user for protecting access to the synthetic channel (Novak at ¶ 0084) to Applicant's "authentication information associated with a user of the communication device," as recited in Applicant's claim 1. In other words, Novak's entered password is associated with the end user viewing the EPG 153. **However, the end user does not have any control over what media is included in the media channel as such functionality is reserved for the uploader, or the upload source 122. In this regard, Novak does not disclose "wherein the selection from the media content is defined by the user" (of the communication device, i.e., the end user of STB 308 or 152), as recited in Applicant's claim 1.**

Furthermore, the Applicant points out that the Final Office Action equates Novak's set-top box 308 (or 152) with Applicant's "communication device." However, Novak does not disclose that the STB 152 has the functionality of communicating (or forwarding/pushing) media content back to the communication network. Novak's ¶0077-0078 relate to steps 1104-1106 of FIG. 11, which are performed by the upload source 122 and not by the STB 308 or 152. The fact that the upload source 122 may

also utilize a STB for uploading is irrelevant since the Examiner has equated Applicant's "communication device" to the STB 308. Novak uses the upload source 122 exclusively for uploading content, and the STB 308 (or STB 152) exclusively for receiving content. Therefore, Novak also does not disclose or suggest "the software platform is operable to communicate the media content to the communication network," as recited in Applicant's claim 1.

Accordingly, independent claim 1 is not anticipated by Novak and is allowable. Independent claims 12, 16, and 27 are similar in many respects to the method disclosed in independent claim 1. Therefore, the Applicant submits that independent claims 12, 16, and 27 are also allowable over the reference cited in the Office Action at least for the reasons stated above with regard to claim 1.

**B. Rejection of Dependent Claims 2-11, 13-15, 17-26, and 28-29**

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 12, 16, and 27 under 35 U.S.C. § 102(e) as being anticipated by Novak has been overcome and requests that the rejection be withdrawn. Additionally, claims 2-11, 13-15, 17-26, and 28-29 depend from independent claims 1, 12, 16, and 27, respectively, and are, consequently, also respectfully submitted to be allowable.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 2-11, 13-15, 17-26, and 28-29.

**CONCLUSION**

Based on at least the foregoing, the Applicant believes that all claims 1-29 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and requests that the Examiner telephone the undersigned Attorney at (312) 775-8176.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

Date: 13-NOV-2008

/Ognyan I. Beremski/

Ognyan Beremski, Esq.  
Registration No. 51,458  
Attorney for Applicant

McANDREWS, HELD & MALLOY, LTD.  
500 WEST MADISON STREET, 34TH FLOOR  
CHICAGO, ILLINOIS 60661  
(312) 775-8000

/ OIB